



## COUNCIL MINUTES

March 1, 2010

The City Council of the City of Mesa met in a Study Session in the lower level meeting room of the Council Chambers, 57 East 1st Street, on March 1, 2010 at 4:33 p.m.

### COUNCIL PRESENT

Mayor Scott Smith  
Alex Finter  
Dina Higgins  
Kyle Jones  
Dennis Kavanaugh  
Dave Richins  
Scott Somers

### COUNCIL ABSENT

None

### OFFICERS PRESENT

Christopher Brady  
Kari Kent  
Debbie Spinner  
Linda Crocker

(Mayor Smith excused City Manager Christopher Brady from the beginning of the meeting.)

#### 1. Review items on the agenda for the March 1, 2010 Regular Council meeting.

All of the items on the agenda were reviewed among Council and staff and the following was noted:

Conflicts declared: None

Items added to the consent agenda: None

Items deleted from the consent agenda: 4c, 4d

#### 2. Convene an Executive Session.

It was moved by Councilmember Somers, seconded by Vice Mayor Jones, that the Council adjourn the Study Session at 4:35 p.m. and enter into an Executive Session.

Carried unanimously.

- a. Discussion or consultation for legal advice with the City Attorney. (A.R.S. §38-431.03A (3)). Discussion or consultation with the City Attorney in order to consider the City's position and instruct the City Attorney regarding the City's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation. (A.R.S. §38-431.03A(4)).

1. Meet and Confer election

(The Study Session reconvened at 5:01 p.m.)

3. Discuss and take action on the Meet and Confer election to designate an Employee Organization for the Mesa Police employees.

Mayor Smith stated that the Council has no preference with regard to which Employee Organization is chosen by Mesa Police employees to represent them in the Meet and Confer process. He noted, however, that what is of utmost importance to the Council is that the election process be fair and untainted.

City Attorney Debbie Spinner reported that in November 2009, the Council approved Management Policy 358, which set forth the process for the City Manager and Employee Organizations to participate in a Meet and Confer process. Ms. Spinner explained that the Policy established that sworn Police and sworn Fire employees can elect an Employee Organization to represent them in a Meet and Confer process. She also stated that the Policy contemplates an election in October, but noted that the City, in working with the Employee Organizations, accelerated the election date in an effort to finalize the Meet and Confer process prior to Council consideration and action on the FY 2010/11 operating budget.

Ms. Spinner remarked that on February 23, 2010, the City Clerk's Office conducted an election for Police and Fire employee groups (Note: Early voting was conducted February 8<sup>th</sup> through 18<sup>th</sup>). She explained that approximately two weeks ago, the Fraternal Order of Police (FOP) filed a complaint alleging that the Mesa Police Association (MPA) engaged in inappropriate campaigning that violated an agreement the parties had entered into prior to the election. Ms. Spinner noted that City staff conducted an investigation of the allegation and has provided the Council with information in that regard.

Ms. Spinner commented that Management Policy 358 provides that each Employee Organization will provide a publicity sheet to the City Clerk to mail directly to the eligible employees. She stated that it was her understanding that the MPA and the FOP submitted publicity sheets to the City Clerk, which were subsequently distributed to the eligible employees.

Ms. Spinner further advised that under the Policy, the City also agreed to show the MPA and the FOP its list of eligible employees and said that the two groups were asked to verify the completeness and thoroughness of the list. She stated that during a series of meetings, the parties agreed that the list would not be shared with anyone and nor would it be used for any purpose other than what is stated above.

Ms. Spinner indicated that the FOP's complaint alleged that campaign material was distributed using the list of eligible employees. She stated that the City's investigation revealed that an officer for the MPA sent the list of eligible employees from his City e-mail system to his personal

computer and then forwarded the information to the Arizona Police Association (APA). Ms. Spinner advised that the APA used the list and sent out campaign material to the eligible employees via the City's e-mail system. She noted that the FOP asked that the Council take action on this matter and said that Management Policy 358 gives the Council the discretion to take whatever action they deem appropriate.

Mayor Smith commented that the Council had hoped the election would be straightforward and said that it had been proceeding in that manner until the alleged event occurred. He stated that it was unfortunate that the Council has been placed in a situation that it preferred not to be in, but would take whatever action was necessary in order to protect the integrity of the election process.

In response to a question from Councilmember Richins, Ms. Spinner clarified that the election to designate an Employee Organization for sworn Fire employees was successfully completed and would not be impacted by the FOP's complaint.

Mayor Smith said that there did not appear to be any representatives of the MPA in the audience, but invited FOP President Bryan Soller to come forward and offer any comments he may have concerning this issue.

Mr. Soller addressed the Council and indicated that the FOP "followed the rules" throughout the election process and should not be penalized because of the actions of the MPA. He stated that it was an unfortunate situation and added that he had not been contacted by the MPA regarding this matter.

Councilmember Kavanaugh concurred with Mayor Smith's comment that it was important for the Council to protect the integrity of the election process.

It was moved by Councilmember Kavanaugh, seconded by Councilmember Richins, that: 1.) The City nullify the Police Department's employee portion of the election; 2.) That the City Clerk be directed to not officially tabulate the results for the Police Department; and 3.) That Police Department employees will be eligible to participate in another "Meet and Confer" election in October 2010.

Councilmember Finter commented that it was unfortunate that the election process was tainted with accusations and threats of lawsuits. He expressed support for the motion and said it was in the best interest of the citizens of Mesa that a new election be held.

Councilmember Richins inquired under what rules Police employees would negotiate with the City if the pending motion were approved.

Ms. Spinner responded that any employee, including Police employees and Police organizations, can meet with the City Manager under the "Meet and Discuss" process.

Mayor Smith clarified that for a number of years, both Police organizations have met with the City Manager under the "Meet and Discuss" process and said that process would continue through the current budget cycle. Mayor Smith added that the October election would determine which police union would represent Mesa Police employees in the "Meet and Confer" process in the future.

Ms. Spinner confirmed Mayor Smith's statements.

Vice Mayor Jones concurred with the comments of his fellow Councilmembers and stated that he was very disappointed that the election process was tainted. He noted that prior to the October election, it would be necessary for the City to implement a process that includes sanctions in order to prevent "child's play" from occurring again. Vice Mayor Jones added that it would be inappropriate for the Council to declare a winner or non-winner in the election and fully supports not tabulating the results for the Police Department.

In response to a question from Councilmember Richins concerning the reason for delaying the election until October, Ms. Spinner advised that in order for the Meet and Confer process to be effective, it must be completed prior to Council consideration and action on the FY 2010/11 operating budget. She stated that if the election were held in March, for example, there would be insufficient time to engage in the Meet and Confer process and have any practical results in time for the Council to consider the FY 2010/11 budget.

Mayor Smith commented that last Friday, he met with the leadership of the FOP and MPA and encouraged the parties to come up with a solution that would be fair and equitable. He indicated that it was unfortunate that the parties were unable to do so and noted that the Council received a letter from the MPA rejecting that approach. Mayor Smith said that because a representative of the MPA was not in attendance at today's meeting, the letter would have to stand, which denied any wrongdoing and reflected that certain procedures should have been established.

Mayor Smith reiterated that the procedures for the election were negotiated and agreed upon by all parties. He noted, however, that sanctions were not included because the Council had hoped that the parties would abide by the rules. Mayor Smith also acknowledged that this incident has impacted the Police officers who are members of both Employee Organizations and added that it was unfortunate that "the acts of a few affect many."

Mayor Smith called for the vote.

Carried unanimously.

4. Hear reports on meetings and/or conferences attended.

Councilmember Richins:	"Top 2 Bottom" Event in Districts 1, 3 and 5
Councilmember Higgins:	Fundraising BBQ at Sunshine Acres
Councilmember Somers:	Police Department "Appreciation Day"
Councilmember Kavanaugh:	VIP Reception for "Play Ball: The Cactus League Experience"
Mayor Smith:	"Friends of Transit" Conference

5. Scheduling of meetings and general information.

City Manager Christopher Brady stated that the meeting schedule is as follows:

Tuesday, March 2, 2010, 10:00 a.m. – Neighborhood Stabilization Program Ceremony

Thursday, March 4, 2010, 7:30 a.m. – Study Session

Thursday, March 4, 2010, 2:00 p.m. – “Doing Business with the City of Mesa” Event

Thursday, March 4, 2010, 12:00 p.m. – Chicago Cubs Spring Training Opening Game

Councilmember Somers asked to be excused from the March 4<sup>th</sup> Study Session.

6. Adjournment.

Without objection, the Study Session adjourned at 5:27 p.m.

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SCOTT SMITH, MAYOR

ATTEST:

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LINDA CROCKER, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the City Council of Mesa, Arizona, held on the 1<sup>st</sup> day of March 2010. I further certify that the meeting was duly called and held and that a quorum was present.

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LINDA CROCKER, CITY CLERK

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